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Applicability: DSN Boards, Private Contract Providers, DDSN Regional Centers, DDSN Central Office, DDSN District Offices

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## **PURPOSE**

The South Carolina Department of Disabilities and Special Needs (DDSN) places a high priority on promoting consumer rights, choice and self-direction. This emphasis should be balanced with the need to also promote consumer responsibilities (see 510-01-DD/Attachment A). As such, consumer compliance with local, state and federal law should be strongly encouraged. Nonetheless, some consumers will become involved with the criminal justice system.

This policy serves to clarify the role of the DDSN Central and District Offices and the DSN Board/private provider/regional center once consumers are arrested by law enforcement or charged with a criminal offense.

## **PROCEDURE**

### A. Reporting

1. DSN Board/private provider/regional center should submit a written report to DDSN if a consumer is actually arrested by local, state or federal law enforcement.
  - a. The report should be submitted in accordance with DDSN's Critical Incident directive (100-09-DD) for arrests which are made while the consumer is receiving services from a DDSN funded or operated program.
  - b. The report should be submitted to the DDSN Office of Clinical Services for arrests which are made when the consumer is not receiving services. This report should include consumer name, criminal charge, date of arrest and a summary of the nature of the circumstances leading to the arrest.

## B. Incarceration

1. If the criminal charge against the consumer is serious, the consumer may be incarcerated at a local detention facility upon arrest and not be able or allowed to post bond.
  - a. The DSN Board/private provider/regional center should not post bond for the incarcerated consumer.
  - b. It would, however, be appropriate for the DSN Board/private provider/regional center to facilitate the consumer to use personal resources to post bond when appropriate supervision/support can be provided to the consumer after release.
2. The DSN Board/private provider/regional center's primary responsibility if a consumer is incarcerated following arrest is to advocate for the consumer to be assigned a public defender in a reasonable period.
3. If the consumer is not on Level I service coordination when arrested, he/she should be placed on Level I service coordination.
4. If the consumer does not have active family, the DSN Board/private provider/regional center should also have contact (telephone or personal) with the locally incarcerated consumer at least monthly (prior to trial) to assure that his needs are being met (especially needs relating to medications).
5. If the consumer is incarcerated in a state operated correctional facility following a court trial, the service coordinator should make contact (telephone or personal) with the consumer as often as needed but at least a quarterly basis (monthly once the consumer is within six month of release).
6. The DSN Board/private provider/regional center should not make any agreements with the Court, Solicitor or Public Defender to accept responsibility for serving the consumer in exchange for the criminal charge not being prosecuted. If such an agreement is suggested to the DSN Board/private provider/regional center, the DDSN Office of Clinical Services (OCS) or DDSN Office of General Counsel (OGC) should immediately be notified.

## C. Forensic Examination/Court Orders

1. When a consumer is involved with the criminal justice system, there should be a determination made if the consumer is competent to stand trial (see 508-01-DD), unless the charge is docketed for Magistrate Court.
2. The OCS coordinates the psychological evaluations which must be conducted to assist the court to determine if a consumer is competent to stand trial.
  - a. Typically the court order to conduct the "competency to stand trial evaluations" will be sent to the OCS.

- b. In the event that a Court Order to conduct the “competency to stand trial evaluation” is inadvertently sent to a DSN Board/private provider/regional center, the court order should immediately be sent to OCS.
3. Court orders for persons to be evaluated regarding their competency to stand trial and the presence of mental retardation are the most common orders sent to DDSN.
  - a. These court orders are received from the Family Court or General Sessions Court.
  - b. Some consumers referred for competency to stand trial evaluations are already eligible DDSN consumers and known to the Department. A number of consumers referred for competency to stand trial evaluations, however, are not previously known to the DDSN system.
  - c. In either case, two DDSN examiners conduct the evaluation to determine whether the presence of mental retardation is indicated, and if so, render an opinion regarding the consumer’s competency to stand trial.
4. If a consumer is deemed to be incompetent to stand trial and the examiners believe mental retardation is present, the DSN Board/service coordination provider in the consumer’s home county will be notified by OCS with a copy of the competency evaluation DDSN completed by DDSN and any other pertinent information forwarded by the Solicitor’s office. The DDSN/District Office (DO) and the Director of the Consumer Assessment Team (if the consumer must go through intake) will be notified by copy of the letter to the DSN Board/service coordination provider.
5. If a consumer is found not competent to stand trial, a the Solicitor may petition the Family or Probate Court to issue a Petition to “judicially admit” the consumer to the jurisdiction of DDSN.
  - a. These Petitions should judicially admit a consumer to DDSN, not a specific facility.
  - b. These Petitions are typically sent to the OCS, however in the event that a Petition for a “judicial admission to DDSN” is inadvertently sent to a DSN Board/private provider/regional center, the Petition should immediately be sent to OCS.
6. OCS tracks all incoming court orders/petitions for the Department. OCS and the OGC are responsible for insuring that DDSN and the DSN Boards/private providers respond to these court orders in a timely and appropriate manner with meaningful information provided back to the Court.
7. There are three (3) situations in which the DSN Board/private provider/regional center must respond following a forensic evaluation/judicial admission order:
  - a. If a consumer is deemed incompetent to stand trial by DDSN and is already eligible for DDSN services, it is expected that the DSN board/service coordination provider will follow through upon notification by OCS to develop, review, and/or revise a service plan of supports for the consumer.

- b. If an consumer is deemed incompetent to stand trial by DDSN and is not known to the DDSN system, it is expected that the DSN board/service coordination provider will follow through upon notification by OCS to initiate and complete the intake process (assuming the consumer consents to intake), and if the consumer is determined eligible, the DSN Board/service coordination provider will develop a plan of service for the consumer.
- c. If there is a petition for judicial admission of a consumer due to his/her incompetence to stand trial, it is expected that the DSN board/service coordination provider will follow through, upon notification from OCS, to develop a service plan for the consumer.
  - 1) The service plan must be reasonably expected to prevent a recurrence of the activity which resulted in criminal charges against the consumer.
  - 2) The DSN board/service coordination provider is expected to attend the court hearing for a judicial admission and present the service plan to the court. When feasible, OCS or DO staff will also be in attendance at the court hearing to assist the service coordinator.
  - 3) The planning process/contact with the consumer and family needs to be initiated as soon as possible after notification from OCS, not from the notice of hearing. OCS may only get a few days notice of the Court hearing.
  - 4) The development of a Service Plan for a consumer who is being judicially admitted to DDSN involves the following steps:
    - ❖ Assessment of the home setting and determining what services can be offered to support the consumer in his/her home, if appropriate, and if providing in-home supports will adequately provide for the health, safety, and supervision needs of the consumer.
    - ❖ Services from a DSN Board/service coordination provider do not necessarily have to include residential placement if the plan can adequately provide the services and supports to meet the needs of the consumer in his/her home and community in a manner which would be reasonably expected to prevent the recurrence of any criminal activity.
    - ❖ If the DSN board/service coordination provider completes its assessment and determines that the needs of the consumer cannot be met in his/her home, the reasons why such a plan is not a feasible option needs to be explained.

- ❖ If residential placement is identified as a need, the next step is for the DSN Board/service coordination provider to assess whether it can serve the consumer in a local community residential setting. The service coordinator should notify the DO of the need for residential services in accordance with 502-05-DD.
- ❖ If the DSN Board/service coordination provider determines the needs of the consumer cannot be met in one of the local residential settings, the reason why such a residential plan is not feasible needs to be explained to DO. Again, this should be explained on the Report of Critical Circumstances.
- ❖ The next step in the planning process would be to explore other residential options with other DSN Boards/private providers within the DSN network via coordination with the DO.
- ❖ The DO is notified by OCS of the case at the same time the DSN Board/service coordination provider is and should communicate with the local DSN Board about the status of the Service Plan's development.
- ❖ The DSN Board/service coordination must submit a copy of the Service Plan to the OCS for review at least 2 weeks before the probate court hearing (assuming that there is at least two week notice of the hearing).
- ❖ Any problems completing the Intake or a Single Plan must be communicated back to the OCS within 30 days from receipt of the letter.
- ❖ The DSN Board/service coordination provider needs to involve the DO in the planning process when:
  1. Technical assistance is needed after the DSN Board/service coordination provider has developed an appropriate Service Plan.
  2. The case needs to be reviewed for consideration of placement on the critical waiting list.
  3. There are delays in processing for eligibility. Processing to CAT needs to be expedited because notice of a court hearing may be given at any time.
  4. There are problems with availability of resources, as determined by assessing the consumer's specific needs as previously outlined.

#### D. Service Implementation

1. The DSN Board/private provider/regional center must assure that the service plan presented to the court is immediately implemented as written.
2. The DSN Board/private provider/regional center must provide regular management oversight of service plan implementation to assure the consumer's needs are being met in a fashion which reduces likelihood of re-offending.
  - a. For consumers who have been accused of a crime against another person, this oversight should involve direct observation and be at least monthly for the first six months and quarterly thereafter.
  - b. For consumers with other types of criminal charges quarterly oversight will typically be sufficient.
3. If problems occur with the implementation of the plan, the DSN Board/private provider/regional center must assure that OCS is notified immediately.

#### E. Quality Assurance/Prevention

1. OCS staff will track law enforcement involvement and will contact DSN Boards/private providers/regional centers to assure the current status of the law enforcement is accurate and that necessary steps in the judicial process have been completed.
2. OGC and OCS staff will endeavor to provide periodic training to county judges, solicitors, public defenders in pertinent laws and regulations relating to DDSN consumers involved with the criminal justice system.
3. DSN Boards/private providers/regional centers should offer training as needed (upon employment and at least once every three years thereafter) to applicable staff in the established protocol for responding when a consumer has involvement with the criminal justice system.
4. DSN Boards/private providers/regional centers should evaluate as needed (at least quarterly) the adequacy of the service plan/consumer level of accountability for those consumers with a history of criminal charges.
  - a. When a consumer does not reside in a DDSN sponsored residential setting and the DSN Board/private provider believes that the consumer's level of accountability is insufficient to prevent the consumer from re-offending, the DSN Board/private provider should immediately contact OCS or DO.

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